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COMCAST POST-HEARING OPENING BRIEF

APPENDIX 1

Comparison of Joint Briefing Outline and Comcast Opening Brief Outline

SED/Comcast Joint Agreed Outline	Comcast Brief Outline
Executive Summary	Executive Summary
I. Introduction and Summary of Recommendations	I. Parties, Questions Presented, and Summary of Recommendations
A. Parties and Authority	A. The Comcast Entities Named in this Proceeding
B. Summary of Recommendations (Rule 13.11)	B. Summary of Recommendations (Rule 13.11)
C. Questions Presented	C. Questions Presented
II. Background	II. Background
A. Factual	A. Regulatory Background
B. Procedural	B. Procedural Background
III. Factual Issues	III. Factual Issues
A. Nature of the Breach/Release	A. The Inadvertent Release Resulted from an Anomaly in a Data Extraction Process Used to Identify Non-Published Directory Listings [Comcast will respond regarding "other" releases in reply]
1. How release occurred	
2. Was there more than one release	
B. Extent of Release	B. The Extent and Duration of the Release of the Non-

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	Published Listings [outline sections B & C combined]
C. Duration of Release	C. Comcast First Identified the Process Error in November 2012 [outline sections D and E combined]
D. Discovery of Release	
E. Could Release have been discovered Earlier	
F. Fixing the Release/Deleting the Listings	D. Once the Error was Identified, Comcast Promptly Fixed it and Deleted the Listings
G. Comcast Policies and Procedures before and during release	E. Comcast's Disclosures to Customers About Non-Published Service are Clear, Reasonable, and Consistent with Industry Practice <ul style="list-style-type: none"> 1. Comcast's disclosure of terms and conditions regarding its nonpublished service, as stated in its Privacy Notice <i>inter alia</i> 2. Practice with regard to nonpublished numbers 3. Other policies and procedures
H. Notice and Remedies for Customers	F. Comcast Used Reasonable Efforts to Notify Customers, Refund Non-Published Fees, and Provide Redress Options <ul style="list-style-type: none"> 1. Notification 2. Compensation 3. Other remedies
I. Comcast Policies/Procedures Since Release	G. Since Discovering the Release, Comcast has Strengthened Its Policies and Procedures to Protect Customers Non-Published Listings

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J. Facts Relevant to Penalty Analysis	<i>[Addressed in section D below]</i>
IV. Legal Argument	IV. Legal Argument
A. Jurisdiction	<p>A. The Commission Lacks jurisdiction over this matter</p> <ol style="list-style-type: none"> 1. Section 710 Bars this Investigation 2. The Commission Lacks Authority to Enforce the California Constitution's Right to Privacy
B. Evidentiary Standard	<p>B. SED Must Demonstrate by a Preponderance of the Evidence that Comcast Phone Violated the Law</p>
C. Alleged Violations of Law	<p>C. Even Assuming it has Jurisdiction, the Commission Cannot Establish Any Violation of Law</p>
1. CA Constitution	<p>1. The Commission Cannot establish a Violation of the Constitutional Right to Privacy</p>
2. Public Utilities Code:	<p>2. Commission Cannot Establish a Violation of PU Code §§ 2891.1 or 2891</p> <p>a. Section 2891.1(a) does not apply where, as here, a regulated telephone company did not sell or license its own unlisted/unpublished numbers</p> <p>b. Even if this investigation focuses solely on Comcast Phone's provision of interconnection service, Comcast Phone still cannot be held liable for violating Section 2891.1.</p> <p>c. SED has not alleged that Comcast violated Section</p>

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	2891 and, thus, this claims fails as a matter of law
a. §§ 2891 and 2891.1	
b. §451	3. The Commission Cannot Establish A Violation of PU Code section 451
3. Other issues identified in Commission Scoping Memo	<i>Reserved for reply</i>
D. Potential Penalties	D. No Penalty Should Be Imposed
1. 2107	1. Commission Precedent Establishes that No penalty is Appropriate
2. 2108	2. Comcast's Voluntary Reporting, Rectification of the Error, and Full Cooperation in this Proceeding Confirm No Penalty is Appropriate
	3. There Was No Unaddressed Serious Harm
	4. A Penalty is Not Necessary for Effective Deterrence
E. Potential Restitution and/or Non-Monetary Remedies	5. The Totality of Circumstances Weigh in Favor of Mitigating any Penalty <i>Reserved for reply</i>

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V.	Conclusion	V. Conclusion

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APPENDIX 2

Chart of Periods of Receipt of Inadvertently Released Non-Published Listings

PERIODS WHEN ENTITIES RECEIVED UNPUBLISHED LISTINGS AND MADE THEM AVAILABLE

